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No. 07-759

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SUPREME COURT, U.S.

In The

Supreme Court of the United States

MICHAEL HANNING LORIZ
and CARA FRANCKE LORIZ,

Petitioners,

v.

JOHN B. CONNAUGHTON, *et al.*,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

PETITION FOR REHEARING OF ORDER OF DENIAL OF WRIT OF CERITORARI

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OPINION AND JURISDICTION

This is a request for rehearing of Petition for Writ of Certiorari, S. Ct. 07-759, pursuant to Rule 44.2. The Order denying Certiorari was entered February 19, 2008.

REASONS FOR REHEARING THIS CASE

The denial of a writ of certiorari has left Petitioners Mike and Cara Loriz with no legal remedy to stop state-sanctioned shotgun fire from endangering their family and the public and from depriving them of their residential property. After finding merit to takings claims and lauding the Loriz family's abandonment of their property, the Sixth Circuit issued an irreconcilable dismissal with prejudice. The Petitioners have no recourse but to return to the property and defend against the gunfire pursuant to their Second Amendment rights.

Substantial grounds for granting the writ have yet to be reviewed by this Court. Only one panel of judges has reviewed the substance of this case, substance that is well represented by a National Rifle Association (NRA) technician report condemning the shooting range and a videotape of a county judge ordering range operators to shoot into the Loriz property during a court-ordered stay. Only the Sixth

Circuit injunction panel of fully vested justices[1] reviewed that evidence and ruled that this case had merit and should proceed.

NRA technician Jack Giordano inspected the Loriz property and, in consultation with shooting range designer Lorin Kramer, found the shooting range to be "in direct conflict with National Rifle Association's policy of Total Projectile Containment" (from Exhibit A, appellate injunction motion, July 13, 2006). "We believe that shot leaving the shooting preserve property is in direct conflict with Ohio Revised Code . . . " (*Ibid.*). Shooting into the property of another is a crime in Ohio (ORC 2923.16) and Ohio law further requires that shooting ranges substantially comply with NRA guidelines (1510:31-29-03(D)).

The strong NRA position on projectile containment and implications to Ohio law were absent from the *pro se* petition. The petition did not link the NRA-expert review to the injunction panel finding that

> Loriz has a likelihood of success on appeal. The court must ultimately decide whether this case is more analogous to *Williamson County Reg'l Planning Comm's v. Hamilton Bank*, 473 U.S. 172, 186 (1985), or *Montgomery v. Carter County*, 266 F. 3d 758, 766-768 (6th Cir. 2000). Loriz has not, however, shown irreparable harm. Loriz made the

[1] The Sixth Circuit's dispositive ruling was written by a visiting district court judge.

> laudable decision to move the family away from the danger posed by a stray hunter's bullet. Having moved the family away, Loriz now faces economic harm. Pet. App. 19-20.

The economic harm declared by the Sixth Circuit can never be compensated unless this Court grants a writ of certiorari in this case. A district court ruling that takings claims were unripe for *lack* of state proceedings was reversed by an appellate court ruling that those same takings claims had *already been heard* in state court. No regard was given to the injunction panel's declarations; there is no indication in the final disposition that the injunction ruling even existed.

Review of this case could establish that compliance with the NRA projectile containment policy is necessary to ensure that shooting ranges do not infringe on constitutional rights of adjacent property owners. Such a ruling would promote the interest of justice by limiting litigation against compliant shooting ranges.

Reconsideration is necessary to address a circuit court action of constitutional import that can only be resolved by this Court.

As presented in the petition, an oral argument was long scheduled for this case in the Sixth Circuit and journalized, twice, by court order (Pet. App. 15-17). That oral argument was cancelled by *ex parte* stipulation between the Respondents and the court; no written order followed.

Previously unnoticed, the final ruling of the Sixth Circuit did not cite a unanimous panel decision to forego oral argument, an argument established by the court's written orders. This failure to address *a court-ordered oral argument* defies Federal Rule of Appellate Procedure 34(a)(2) and raises serious due process questions.

Mike Loriz has been unintentionally and intentionally shot at by the patrons and operators of the range. When he returns to the property, as the Sixth Circuit disposition logically requires, he will enter the line of state gunfire again. He will have no laws to protect him: county prosecutors adamantly refuse to file civilian or law enforcement charges against anyone on the range. If he shoots back in defense, he *will* be prosecuted as he was (unsuccessfully but at great professional risk and personal cost) in 2001 and 2002.

The federal rulings below result in the criminalization of the Loriz family's secure use of their own property.

There are no state remedies in this case; there are no pending state court actions and no hidden jurisdictional bars. The only prior adjudication was a state-court administrative appeal of a neighbor's (the range property's) zoning permit, used by the Sixth Circuit to bar all Loriz claims arising before, during, after and independent of that administrative hearing pursuant to *Rooker-Feldman*. Such a dismissal with prejudice is unprecedented.

Petitioners are faced with the prospect of endlessly paying taxes on an unsellable, unsafe property. No one can enter the property without risk of injury, despite the defense suggestion that our children wear hunter orange vests when playing in the backyard.

Facing this risk, Loriz shall return to the property to clear the lead-embedded trees near the shooting range; access is needed to facilitate further video documentation of the shooting for the national media. Given the failure of government officials to prevent the gunfire danger (instead, they continue to permit it) or to prosecute criminal acts, Petitioner Mike Loriz shall defend himself against potentially lethal gunfire in accordance with the Second Amendment and common law.

Respondents host up to 35 shooters equipped with 12 gauge shotguns loaded with anything from number 8 shot to lead slugs. Petitioner will have a .22 caliber carbine and a .30 caliber rifle. Petitioner will let his presence be known. If shots are fired in his direction, they will be returned in kind.

Consistent with "red and tight" rules of engagement, Loriz will fire only if fired upon. The one exception is a repeat of a past offense: if a heavily armed man threatens a Loriz child on her play set. While Mike Loriz accepts the potential loss of his own life, he does not accept that for his daughters, who still have nightmares about shooters coming after them.

These are the unfortunate consequences of corrupt county and state authorities and federal courts

whose orders cannot be reconciled with each other or with the rule of law. Petitioners, denied both discovery and amendment of their complaint, have not had a single day in court. Attorney after attorney and judge after judge has defended or condoned rural "sportsmen" shooting the daylights out of our property but consider the suggestion of an identical operation in their neighborhoods to be a criminal threat. Every federal court below has recognized that our property has been taken by shotgun fire but each has deprived us of any relief. An American family has been shot off its property by the state and barred from all legal recourse.

As a humble instrument of the Court, Loriz shall, without malice, return to his property and risk his life to defend his fundamental Constitutional rights.[2] As the legal owner and taxpayer of that property, Loriz asserts the right to walk on it. If the act of walking on the property results in a state-sanctioned, court-condoned bloodbath, so be it. Such an outcome is an inevitable consequence of the Sixth Circuit ruling, should it stand.

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[2] After nearly losing his own life in a Navy F-18 and watching comrades die in defense of the Constitution, Petitioner notes the irony that he may now lose his life because the federal courts will not uphold that same Constitution.

CONCLUSION

After reconsideration, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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MARCH 2008

CERTIFICATE OF COUNSEL

I hereby certify that this Petition for Rehearing is submitted in good faith and not for delay. This Petition for Rehearing is restricted to the grounds set out in Rule 44.2.

_____

Michael Hanning Loriz